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Catarina R. Gonzales, *Commissioner*  
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 24, 2025

Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

RE: **IN THE MATTER OF THE APPLICATION BY TCCI MONTGOMERY  
GARDENS, LLC FOR TPDES PERMIT NO. WQ0016354001  
TCEQ DOCKET NO. 2025-0374-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Jessica M. Anderson".

Jessica M. Anderson, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**DOCKET NO. 2025-0374-MWD**

**APPLICATION BY TCCI  
MONTGOMERY GARDENS, LLC  
FOR NEW TPDES PERMIT NO.  
WQ0016354001**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE  
TO REQUESTS FOR HEARING**

**To the Members of the Texas Commission on Environmental Quality:**

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Requests for Hearing on the application in the above-captioned matter and respectfully submits the following.

**I. INTRODUCTION**

**A. Summary of Position**

Before the Commission is an application by TCCI Montgomery Gardens, LLC (Applicant or TCCI) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016364001. The Commission received timely comments and hearing requests from Lauren Kalisek on behalf of North Texas Municipal Water District (NTMWD) and Tom Wallis Airhart on behalf of Tom Patterson and JoAnne Airhart. For the reasons stated herein, OPIC respectfully recommends that the Commission find that Tom Wallis Airhart is an affected person and grant his hearing request.

## **B. Description of Application and Facility**

TCCI applied to the TCEQ for a new TPDES permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.15 million gallons per day (MGD). The proposed facility would consist of a membrane bioreactor (MBR) treatment system, which combines conventional biological activated sludge processes with membrane filtration. Treatment units would include three fine screens, an anoxic basin, an aerobic basin, an MBR basin, a sludge press, and an ultraviolet light disinfection system. Sludge generated from the proposed facility would be disposed of at a TCEQ-permitted landfill, TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or a facility that further processes sludge.

The proposed facility would be located approximately 1.0 miles southeast of the intersection of Farm-to-Market Road 549 and Texas State Highway 8 near Copeville in Collin County. The proposed discharge route is via pipe to an unnamed tributary, then to Price Creek, then to Lake Lavon in Segment No. 0821 of the Trinity River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary and Price Creek. The designated uses for Segment No. 0821 are primary contact recreation, public water supply, and high aquatic life use.

## **C. Procedural Background**

The application was received on June 13, 2023, and declared administratively complete on August 7, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English on August 12, 2023,

in the *McKinney Courier Gazette* and in Spanish on August 22, 2023, in *La Prensa Comunidad*. The Notice of Application and Preliminary Decision was published in English on February 11, 2024, in the *McKinney Courier Gazette* and in Spanish on March 5, 2024, in *La Prensa Comunidad*. The public comment period ended on April 4, 2024. The Executive Director's (ED) Response to Comments (RTC) was mailed on August 29, 2024. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was September 30, 2024.

## **II. APPLICABLE LAW**

The application was filed after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under 30 Texas Administrative Code (TAC) § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the requestor's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected

by the proposed facility or activity in a manner not common to members of the general public;

- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

30 TAC § 55.20(d).

Under 30 TAC § 55.203(a), an "affected person" is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. As provided by § 55.203(b), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons. Relevant factors to be considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission must grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)–(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

### **III. ANALYSIS OF HEARING REQUESTS**

#### **A. Whether the requestor is an affected person**

##### **Withdrawn Requests**

A timely hearing request was received from Lauren Kalisek on behalf of NTMWD. This request was subsequently withdrawn. OPIC therefore did not consider this request for referral to a contested case hearing.

##### **Individual Requestors**

##### **Tom Wallis Airhart**

Tom Wallis Airhart submitted timely comments and a hearing request on behalf of his parents, Tom Patterson and JoAnne Airhart. According to the map created by ED staff, the Airhart family property is adjacent to the facility and 0.49 miles from the facility outfall. This proximity is confirmed by the presence of Tom Patterson and JoAnne Airhart on the Applicant's Landowner map and list. Mr. Airhart raised concerns about application accuracy, water quality and Type II reclaimed water, groundwater, runoff, effluent levels, regionalization and need, nuisance odors, wildlife, recreation, and flooding and erosion. Many of these interests are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Because of the Airharts' proximity to the proposed facility, a reasonable relationship exists between the interests they seek to protect and the Applicant's regulated activity—a relevant factor under 30 TAC

§ 55.201(c)(3). Further, the requestor's proximity increases the likelihood that the regulated activity will impact their health, safety, use of property, and use of the impacted natural resource. *See* 30 TAC § 55.203(c)(4)-(5). Given their justiciable concerns and proximity, OPIC finds that the Airharts have demonstrated that they would be affected in a way not common to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find that the Airharts are affected persons.

**B. Which issues raised in the hearing requests are disputed**

The affected requestor raised the following disputed issues:

1. Whether the permit application was accurate.
2. Whether the draft permit is adequately protective of surface water quality.
3. Whether the draft permit is adequately protective of groundwater.
4. Whether the draft permit is adequately protective against excess runoff.
5. Whether the draft permit's effluent limitations are sufficient.
6. Whether the draft permit is compliant with TCEQ's regionalization policy.
7. Whether the draft permit is adequately protective against nuisance odors.
8. Whether the draft permit is adequately protective of wildlife.
9. Whether the draft permit is adequately protective of recreational uses.
10. Whether the draft permit is adequately protective against flooding and erosion.



**C. Whether the dispute involves questions of fact or of law**

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. The issues raised here are issues of fact.

**D. Whether the issues were raised during the public comment period**

Issues No. 1-10 in Section III.B. were specifically raised by an affected requestor during the public comment period.

**E. Whether the hearing requests are based on issues raised solely in a withdrawn public comment**

While some public comments were withdrawn in this matter, those comments were not made by the affected requestor. Therefore, the hearing request of the affected requestor is not based on issues raised solely in withdrawn public comments.

**F. Whether the issues are relevant and material to the decision on the application**

The hearing request raised some issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

### Application Accuracy

The affected requestor in this matter is concerned that the application is inadequate and inaccurate. TCEQ rules require that if an applicant becomes aware that it did not submit required facts or submitted incorrect information in a permit application, the applicant is required to promptly submit the needed facts and information. 30 TAC § 305.125(19). Therefore, Issue No. 1 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

### Water Quality, Wildlife, and Recreation

The affected requestor in this matter raised concerns about adverse effects to surface water quality and the consequential impacts on animal life and recreational activities. The Commission is responsible for the protection of water quality under Texas Water Code (TWC) Chapter 26 and 30 TAC Chapters 307 and 309. The Texas Surface Water Quality Standards (Standards) in Chapter 307 require that the proposed permit “maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and ... economic development of the state....” 30 TAC § 307.1. According to § 307.6(b)(4) of the Standards, “Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.” Additionally, “[s]urface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with

the skin, or to terrestrial or aquatic life.” 30 TAC § 307.4(d). Also, 30 TAC § 307.4(j)(1) requires that existing, designated, presumed, and attainable uses of aquatic recreation must be maintained. Finally, antidegradation reviews are governed by 30 TAC § 307.5, which establishes the Commission’s antidegradation policy and contains provisions for implementation of the policy. As Chapter 307 designates criteria for the regulation of water quality and governs antidegradation reviews, the protection of human health and safety and animal life, and the maintenance of recreational uses, Issues No. 2, 8, and 9 are relevant and material to the Commission’s decision regarding this application.

#### Groundwater

The requestor expressed concerns regarding impacts on groundwater near the proposed facility. As discussed above, the Commission is responsible for the protection of water quality under TWC Chapter 26 and 30 TAC Chapters 307 and 309. Section 309.10(b) states, in part, that “[t]he purpose of this chapter is to condition issuance of a permit and/or approval of construction plans and specifications for new domestic wastewater treatment facilities ... on selection of a site that minimizes possible contamination of ground and surface waters....” Under 30 TAC § 309.12, the Commission considers several factors relating to a facility’s proposed design, construction, and operational features to evaluate a facility’s potential to cause surface water and groundwater contamination. The rule further provides for consideration of active geologic processes and groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge, and aquifer recharge and discharge

conditions. Therefore, Issue No. 3 is relevant and material to the Commission's decision on this application.

#### *Runoff and Effluent Limitations*

Wastewater treatment and effluent limitations at wastewater treatment facilities must maintain water quality in accordance with the TCEQ's surface water quality standards. 30 TAC § 309.1(a). Effluent quality for a domestic wastewater treatment plant permit is addressed under the Commission's rules at 30 TAC § 309.4. In addition, under 30 TAC § 309.12 the siting of a facility should minimize possible contamination of both surface water and groundwater. Accordingly, Issues No. 4-5 are relevant and material to the Commission's decision regarding this application.

#### *Regionalization and Need*

TCEQ's regionalization policy comes from Section 26.081 of the Texas Water Code, which implements "the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." TCEQ's wastewater permit application requires the applicant for a new permit to provide information concerning other wastewater treatment facilities that exist near the applicant's proposed treatment facility site. The applicant is required to state whether any portion of the applicant's proposed service area is located in an incorporated city, whether its proposed service area is located within another utility's certificate of convenience and necessity area, and whether

there is a facility, or any sewer collection lines located within the three-mile area surrounding the proposed facility site. Accordingly, Issue No. 6 is relevant and material to the Commission's decision on this Application.

#### *Nuisance Odors*

TCEQ regulates nuisance conditions under 30 TAC § 309.13(e) which requires applicants to implement a nuisance odor abatement plan. Further, permits issued by TCEQ do not allow the permit holder to create or maintain a nuisance that interferes with a landowner's use and enjoyment of their property. Because 30 TAC § 309.13 addresses nuisance conditions as described by requestors, Issue No. 7 is relevant and material to the Commission's decision on this application.

#### *Flooding and Erosion*

TCEQ's jurisdiction is established by statute and does not include authority under the Texas Water Code or its regulations to address or consider flooding when making a decision on issuance of this permit. Therefore, Issue No. 10 is not relevant and material to the Commission's decision on this application.

#### **G. Maximum expected duration for the contested case hearing**

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary

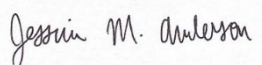
hearing, or a date specified by the Commission, whichever is earlier. 30 TAC § 50.115(d)(2). To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

#### **IV. CONCLUSION**

Having found that Tom Wallis Airhart qualifies as an affected person in this matter, OPIC respectfully recommends the Commission grant his hearing request and refer Issue No. 1-9 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days.

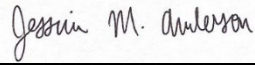
Respectfully submitted,

Garrett T. Arthur  
Public Interest Counsel

By:   
\_\_\_\_\_  
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### CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2025, the Office of Public Interest Counsel's Response to Requests for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

A handwritten signature in cursive script that reads "Jessica M. Anderson". The signature is written in black ink on a light-colored, slightly textured background.

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Jessica M. Anderson

**MAILING LIST**  
**TCCI MONTGOMERY GARDENS, LLC**  
**TCEQ DOCKET NO. 2025-0374-MWD**

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FOR ALTERNATIVE DISPUTE  
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